

**The Bill Blackwood
Law Enforcement Management Institute of Texas**

**Citation in Lieu of Arrest:
A Means of Efficiency**

**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**

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September 2018**

ABSTRACT

Many police departments around the state are understaffed and face budget shortfalls. House Bill 2391 helps alleviate both of these problems by allowing officers the discretion to issue citations in lieu of arrest for certain misdemeanor charges (Home Research Organization, 2007). The citation in lieu of arrest option allows police agencies the opportunity to be more effective on the streets and more efficient with taxpayer's money, but not all Texas law enforcement agencies employ this option. More Texas counties and police agencies should take advantage of this amendment to chapter 14 of the Code of Criminal Procedure to increase efficiency and improve time management within police agencies and law enforcement practices. Jurisdictions that put in place a cite and release policy can expect to see a reduction in the time an officer will spend on a normal arrest for any of the eight various misdemeanors listed under Article 14.06 of the Code of Criminal Procedure. This practice will allow officers to respond to more serious crimes sooner and effectively reduce call pending times. Foregoing the jailing of offenders for these non-violent misdemeanors will reduce the cost of pretrial housing of offenders and reduce the jail population. Citation in lieu of arrest is an effective time saving and cost reduction procedure that can help put taxpayer money to efficient use and assist with budget and staffing concerns within the law enforcement profession.

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INTRODUCTION

Law enforcement agencies have a fiduciary responsibility to efficiently and effectively utilize taxpayer's money while still providing quality service to those they serve within their jurisdiction. On September 1, 2007 Texas H.B. 2391 of the 80th regular session went into effect (Home Research Organization, 2007). This bill allowed officers the discretion to issue a citation to an individual in lieu of an arrest and formal booking for certain misdemeanor charges. These charges include the following and were added to the Texas Code of Criminal procedure under chapter 14.06: possession of marijuana, possession of a substance in penalty group 2-A, criminal mischief, graffiti, theft, theft of service, contraband in a correctional facility and driving while license invalid (State of Texas 2015). This "cite and release" alternative only applies to those who live within the county in which the offense occurred.

Citing offenders in lieu of arrest for these various crimes allows law enforcement officers the opportunity to be more effective in the fight against crime and pushes law enforcement agencies to be more efficient and good stewards of the taxpayers' money. By citing the offender for less serious misdemeanors, the officer is able to devote his or her time more efficiently to more serious offenses or investigative work. The practice of citing for non-violent misdemeanors is an answer or partial solution to law enforcement manpower shortages and current day jail overcrowding problems.

The decades old practice of cite and release has been utilized in some form or fashion by numerous states around the nation. International Association of Chiefs of Police (IACP) (2016) stated that "Citation in lieu of arrest is known by a number of terms in jurisdictions around the United States: citation in lieu of arrest, summons in lieu of

arrest, violation citation, cite and release, field release, field citation, desk appearance tickets, and likely a number of others” (p. 4). Whicomb, Levin, and Levine’s (1984) work found that New York City utilizes a cite and release policy at a high rate and is considered a crucial management tool (as cited in Hirschel & Dean, 1995). According to Perbix (2013), most states employ the cite and release policy for misdemeanor crimes while two states, Louisiana and Oregon, utilize the practice for some lesser felonies. In Texas, Travis County, Hays County, and Midland County are a few jurisdictions that have embraced the new law and encourage its use. The Dallas city council passed a measure to utilize the 2007 law in April 2017 by allowing officers to cite and release individuals found to be in possession of less than four ounces of marijuana (Paul, 2017). More, if not all Texas counties and municipal police agencies should take advantage of this amendment to chapter 14 of the Code of Criminal Procedure to increase efficiency and improve time management within police agencies and law enforcement practices.

POSITION

The implementation of a cite and release policy within a law enforcement agency will reduce the time an officer has to spend on what would normally be an arrest case, reducing the cost for pretrial housing of offenders and the jail population. Response times will be reduced allowing officers to respond quicker to more serious crimes and effectively being more efficient with the resources currently on hand. The cost reduction in jailing suspects will also be beneficial to the public and taxpayers by allowing the savings to be spent on training and or equipment.

Issuing a citation in lieu of an arrest is clearly a more efficient use of time due to the absence of the time consuming transport and booking process of a prisoner. Removing the transport and booking procedure for less serious or non-violent offenses allows officers to better serve the public by returning to their zone to answer additional calls and concentrate on more important tasks (IACP, 2016). Wolf's (1977) analysis reveals a savings of 13,000 man-hours when Nassau County Police Department, in New York, eliminated time and costs related to the transport of offenders by employing a cite and release strategy (as cited in Hirschel & Dean, 1995). The amount of savings will vary from department to department depending on the booking procedures, policies already in place, and distance from the arrest location to the booking location. For example, an officer who makes an arrest in a large heavily populated county may have to drive further and fight traffic to book a suspect in the jail than an officer who works in a smaller less populated county.

Misdemeanor marijuana charges are the arrests most cited and studied for the efficiency of cite and release. Some would argue that the money spent enforcing marijuana laws can be put to better use. Miron (2003) estimated that \$7.7 billion a year was being spent across the U.S. to enforce marijuana laws (as cited in Shepard & Blackley, 2007). Texas had 66,117 marijuana arrests in 2006, which cost an estimated \$655.08 million to the Texas taxpayers for enforcement (Gettman, 2009). Possession of marijuana is still illegal under federal law and state law in Texas. Utilizing cite and release under current law for those charged with misdemeanor possession of marijuana will aid in the reduction of enforcement costs.

Another benefit of employing a cite and release policy is easing of jail overcrowding. Not only is the housing of the offender who can make bond relatively quickly avoided, also the housing of the offender who cannot make bond and is housed prior to trial is avoided. The correctional population in the United States at the year-end of 2015 stood at 6,741,400 (Kaeble & Glaze, 2016). According to Harrison and Beck (2005), jailed individuals awaiting trial make up more than 60% of the national jail population (as cited in Baumer & Adams, 2006). These are inmates that have been denied bail or who cannot afford bail. According to the Texas Commission on Jail Standards (2017), an abbreviated population report showed county jails in Texas had a total population of 66,008 inmates. The same report showed that 5,756 of those 66,008 inmates were pretrial misdemeanor detainees. Obviously not all of the 5,756 misdemeanor case qualify for the cite and release policy, but surely some monetary savings can be found in that number. Although in 2007, Jefferson County, Texas Sherriff Mitch Woods was undecided how his office would implement the new law it was estimated that cite and release would save the county approximately \$52.00 a day per inmate (Texas District & County Attorney Association, n.d.). A benefit within the reduction of jail overcrowding is a potential decline in inmate on inmate violence and inmate on staff assaults within the penal institution. An article originally listed in the Charleston Gazette attributed an 87% increase in inmate assaults on jail staff to overcrowding in West Virginia's ten regional jails during the period of July 1, 2010 through June 2011. The same time period showed an increase of 40% for inmate-on-inmate assaults ("WVA Jail Overcrowding," 2011).

COUNTER POSITION

Those opposed to the cite and release policy believe that offenders that are merely cited and released without posting a bond will more likely fail to appear at their scheduled arraignment date. Travis County, Texas has reported that cited and released offenders have failed to report for their scheduled court date at a rate of 40% as opposed to 15.3% for those who are jailed and post a bond for similar misdemeanor charges (Plohetski, 2013). A survey conducted by Feeney (1982) found that the fail to appear rate was not considered to be a serious problem by many agencies (as cited in Hirschel & Dean, 2013). Some agencies believe that most will show for their court date as required, and those that do not will be arrested on a later date for a warrant or a new crime (Hirschel & Dean, 2013).

Some contend that a cite and release policy will emit a perception of leniency to the public. One argument is that a victim will feel improperly served when they witness a suspect receive a citation in place of going to jail. In an article written by Plohetski (2013), the Williamson County Attorney Dee Hobbs was quoted as saying that law enforcement there declined cite and release because of the “light on crime attitude” (para. 40). A news article gave no indication of Dee Hobbs’ current attitude on the law, but it did state that Round Rock, which is a city located in both Williamson and Travis counties, will start issuing citations to individuals caught with less than two ounces of marijuana or driving with a suspended license (“Round Rock to start,” 2016). This perception of leniency is only at the time of contact by an officer. The offender will still be held accountable for their actions and will face the same degree of punishment as if they had been arrested at the time of the offense. Citations in lieu of arrest appear to be more impartial to those that have been accused of a crime (Hirschel & Dean, 2013).

Issuing a citation for a crime would also remove the stigma of arrest. This would also allow someone who has a job the opportunity to keep that job or not miss any work due to being arrested.

The logistics of installing procedures can be time consuming and costly. Finding a way for multiple agencies within the same jurisdiction to work together as one may be one potential obstacle in implementing a cite and release policy (IACP, 2016). Jurisdictions wishing to institute their own cite and release program can look to those programs that have been in place for years. Modeling new policy after current policy can cut out most of the procedural guesswork. Oakland California has a cite and release model that has been in place since the 1970s (Allen, 1972). Costs for the implementation of a citation in lieu of an arrest policy can be off-set by grants and other assistance. A news article covering the story of Round Rock testing the procedures of cite and release stated Williamson County, Texas received a grant through the governor's office for \$65,000 to purchase two fingerprint scanners and software ("Round Rock to start," 2016).

Some literature mentions officer discretion is a concern as it pertains to a cite and release policy. A citation in lieu of arrest is another enforcement possibility given to officers when the options were do nothing or arrest. The fear is that officers will use cite and release in a discriminatory manner: "some arrestees may be cited when they should have been detained or released with only a warning. Conversely, others may be released with a warning or detained when they should have been cited" (Whitcomb, Lewin & Levine, 1984, p. 21). Policies and laws already exist that prohibit discrimination. Department or jurisdictional policies and training should be created and adhered to that

list the specific criteria for deviation from normal practice. Whitcomb, Lewin and Levin's 1984 National Institute of Justice study titled "Citation Release" reported that surveyed officers suggested that training along with checks and balances within the reporting process would ensure that discretion is applied in a regular method. Sporadic cases of discrimination may occur, but well-defined departmental policies will prevent most officers from abusing the decision making power that they have been entrusted with (Allen, 1972).

Officer Morale is a concern as it relates to lack of job satisfaction with the implementation of a cite and release policy. Welsh's 1993 study found that California officers felt the policy made their job meaningless (as cited by IACP, 2016). A 2005 survey of Georgia law enforcement found that there was substantial support for change in laws pertaining to criminal procedures allowing for the use of citations in lieu of arrest for misdemeanor shoplifting (IACP, 2016).

Community perception is mixed on a cite and release policy. One would assume that public sentiment would depend on whether one was the victim or the suspect when a citation was being issued in lieu of an arrest. Some officers have reported that they are hesitant to issue citations in lieu of arrest when the victim of a crime is demanding an arrest for the transgressions against them (IACP, 2016). Issuing a citation in lieu of an arrest gives the impression that the officer is being lenient on the suspect (IACP, 2016). The County Attorney for Williamson County, Texas, Dee Hobbs, felt that nature of the criminal offense had been devalued when a citation was issued in lieu of an arrest. He further explained that the public's perception of the offense was that it was

no more serious than a traffic infraction (Plohetski, 2013). The reality of the situation is that the punishment for the crime is the same as if the person had been arrested.

RECOMMENDATION

Citation in lieu of arrest as allowed by the Texas Code of Criminal Procedure should be put into practice as a time management and cost reduction measure to efficiently use tax payer money. Issuing a citation is clearly faster and more efficient than the normal booking process, which allows officers to return to service in a timely fashion. The issuing of a citation in lieu of arrest also eliminates the need to jail and hold an individual prior to trial, which in turn lowers the jail population.

Increased failure to appear is the major disadvantage to a cite and release policy. Research has found that most agencies don't believe that a suspect's failure to appear is a serious problem and if they do not appear for their court date a warrant will be issued. Some believe that a cite and release policy is a sign of leniency. This is only the perception at the time of contact by an officer. The issuance of a citation does not change the punishment for the particular crime the suspect is charged with; it only allows the person to skip the initial transport and booking procedure at the jail. Logistics and primary cost are also concerns. Modeling procedures after agencies that have implemented a cite and release policy are the best and most efficient means to construct a policy for the agency. There are also grants available as Williamson County found when two fingerprint scanners were needed for purchase ("Round Rock to start," 2016). Officer morale and public perception were the last two issues against cite and release. It was actually found that law enforcement in Georgia was in support of citations in lieu of arrest for misdemeanor theft charges (IACP, 2016). Education and

policy explanation that included information that punishments were no less for someone that was cited than for someone that was arrested would change public perception. The implementation of an efficient and applicable cite and release policy could prove over time to be a cost effective measure that will allow for the reallocation of resources to more important components within a law enforcement jurisdiction.

Although there will be no one size fits all standard and policies will vary from jurisdiction to jurisdiction, one thing is for sure: all stakeholders will need to be involved in the development process. Depending on the jurisdiction, the stakeholders may include: the local agencies, county magistrates, and the prosecuting attorney's office. Any policy regarding cite and release should first and foremost be governed by the Texas Code Criminal Procedure 14.06. Only the eight misdemeanor laws listed under this statute should be eligible which include: class B criminal mischief, class A and B graffiti, class B theft, class B theft of service, class B contraband in a correctional facility, class A and B possession of marijuana, class A and B possession of a substance under penalty group 2-A and class A and B Driving While License Invalid ("Must take before magistrate," 2015). Under the statute; only those who reside in the county where the offense occurred are eligible to receive a citation in lieu of arrest and the citation has to contain written notice of the time and place the person must appear before a magistrate ("Must take before magistrate," 2015).

Agencies implementing a cite and release policy may want to consider criteria when a written notice shall be issued and when the officer has discretion to take other means of action. Criteria that should be taken into consideration when an officer shall not issue a citation includes: whether the person has been charged with failure to

appear, whether the person has a prior conviction for the same charge, whether the person can adequately prove their identity, whether the person has outstanding warrants, if the release of the person would endanger the prosecution of this case or any other case and if the person refuses to sign the citation, they should be taken before a magistrate.

If the person has been charged with failure to appear in the past it would indicate they are a risk to not appear for the new charge as well. If the person has a prior conviction for the same charge it would indicate they have refused to adhere to the law. If the person cannot adequately prove their identity there is a potential this person is lying about who they are. This could lead to a citation being issued to a person that does not exist or even worse, someone who is completely innocent of the crime committed. This could further lead to a warrant being issued for the innocent person. If the person has outstanding warrants it may indicate that they do not recognize that they did anything against the law and do not hold themselves accountable for their actions. There may also be times when a person is someone of interest in a case and evidence from this person may be needed to prove the case; for example fingerprints or a statement. A person's refusal to sign a citation is usually an indication that they will not show for court and needs to be taken before a magistrate.

Once the officer has determined that the person is eligible for a citation and issued the citation, he or she will indicate the time and place where the suspect is to appear by writing it on the citation. Further, the policy should indicate how the prosecuting office is notified of the charge. The notice could be given by forwarding the citation to the prosecutor's office. The citation should act as the complaint. The

prosecutor can then determine whether the charge or charges will be accepted. Once the charges are accepted the complaint will be forwarded to the magistrate judge.

The judge will magistrate the person as if they had been arrested at which time the booking and fingerprinting process will occur. During the magistrate process the person can enter a plea and be adjudicated or request a trial. If the person requests a trial they can be released on a personal recognizance bond and allowed to go on their way until their future court date.

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